IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

CRP.No. 165 of 2007()

OS.292/1997 of PRL.SUB COURT,TRIVANDRUM

.....

REVN. PETITIONER: JUDGMENT DEBTORS:

---

1. STATE OF KERALA,
   REP. BY THE CHIEF SECRETARY, GOVT.SECRETARIAT,
   THIRUVANANTHAPURAM.

2. THE SUPERINTENDING ENGINEER,
   ROADS AND BRIDGES (SOUTH CIRCLE)THIRUVANANTHAPURAM

BY GOVERNMENT PLEADER SMT. R.BINDU

RESPONDENTS: DECREE HOLDER:

C. SUDHAKARAN,
CONTRACTOR, SWAPNA BHAVAN, BHARANIKAVU,
PUNALUR, KOLLAM.

BY ADV SHRI. BABU JOSEPH KURUVATHAZHA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

C.R.P.No.165 OF 2007 F

Dated this the 4th June, 2007.

O R D E R

Heard the learned Govt. Pleader.

2. The challenge is against an order passed by the Court permitting the decree holder to realise an amount of Rs.11,233/- as balance amount towards the decree debt. The Govt. Pleader would submit that the Government is bound to deduct income tax at source and it has done so and therefore there is no further amount due to the decree holder. The court below found that the State has no authority to deduct tax and therefore, directed the State to pay balance amount. Learned counsel for the Government had brought to my notice the decision of this Court reported in **State of Kerala v. Mariyamma** {2005(2) KLT 587}. It was a case relating to deduction of tax in a land acquisition case. This Court has held that it is a well settled position of law that whenever any authority deduct income tax at source he is bound to issue a tax deduction certificate to the claimant. The court made it very clear that when the tax is deducted at source and if the person against whom the tax is deducted is entitled to get exemption from payment of tax, he can get a certificate of

deduction at source from the concerned officer and produce it before the income tax department with a claim for refund of tax amount. So, in other words, what is contemplated is that when tax is to be deducted it has to be deducted at source and if a party is not liable to pay the tax it is for the party to claim refund of that amount from the income tax department. Therefor, the order passed by the authorities deducting tax at source cannot be found fault with and if the decree holder is not liable to pay any tax he may get a certificate regarding deduction at source from the concerned officer and produce it before the income tax department claiming refund of the tax. Therefore, the order passed by the learned Subordinate Judge requires interference and therefore it is set aside. If the amount deducted at source for income tax is also taken into consideration there will not be any further balance to be paid towards decree debt and therefore the decree has to be treated to have been completely satisfied. The remedy for the decree holder if at all is to place his claim before the income tax department. C.R.P is disposed of accordingly.

M.N.KRISHNAN
Judge

jj